

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:16cr265
Akron, Ohio
Plaintiff, February 4, 2019

vs.

ERICK HENDRICKS,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

SENTENCING HEARING

APPEARANCES:

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P R O C E E D I N G S

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THE COURT: Please be seated, ladies and gentlemen.

For the record, the court has before it today Case Number 1:16cr265. The case is United States of America versus Erick Jamal Hendricks.

We're here today for sentencing.

Counsel the for government, are you ready to proceed?

MR. SHEPHERD: We are, Your Honor.

THE COURT: On behalf of the defendant?

MR. BRYAN: We are ready, Your Honor.

THE COURT: Thank you. Mr. Hendricks, did you go over the presentence report and discuss it with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Counsel, did you review the report with your client?

MR. BRYAN: We have, Your Honor.

THE COURT: The report indicates that there's one unresolved objection and that objection has been set forth in the presentence report, as well as the sentencing memoranda submitted by the defendant. It's at paragraphs 27, 38 and 62.

1 Defendant objects to the so-called terrorism
2 enhancement under Guideline 3A1.4.

3 Counsel for the defendant, do you wish to be heard
4 further regarding your argument regarding that matter?

13:01:51 5 MR. BRYAN: Your Honor, inasmuch the government
6 has filed its sentencing memorandum after we filed ours, I
7 do think there are a couple of things I need to say with
8 regard to that enhancement.

9 In essence -- and I am responding mostly to the
13:02:07 10 government's sentencing memorandum on this issue in these
11 comments now. In essence, the government's argument would
12 turn every material support case into one in which the
13 terrorism enhancement would have to be applied. Under that
14 notion, I don't understand why we even have a separate
13:02:27 15 guideline provision for material support in terrorism or for
16 the terrorism enhancement.

17 So this is a very fact specific determination that
18 has to be made, and it's kind of hard to be made in a case
19 where there is no underlying specific event, but we're
13:02:44 20 alleging an attempt or a conspiracy. As the court knows,
21 both of those are inchoate offenses, and the government's
22 not required to prove anything specific. They're not
23 required to prove anything was going to happen. They just
24 have to prove, in essence, a conspiracy to provide material
13:03:00 25 support as that's defined under the law.

1 And sitting here today, knowing that Mr. Hendricks
2 has been convicted of the material support conspiracy to
3 provide material support, as well as attempting to provide
4 material support, the only thing we can go on are the facts
13:03:15 5 in the case.

6 And so we mention in our sentencing memorandum the
7 only specific event that was even discussed, although
8 Mr. Hendricks was never charged with or made a defendant in
9 that case, was the Garland attacks where the two individuals
13:03:32 10 went to the Drawing the Prophet Muhammad contest and as
11 before -- as they began to open fire, they were killed by
12 law enforcement officers.

13 Clearly the motivation wasn't to attack the
14 government or to retaliate against the government because of
13:03:50 15 its policies, but in that instance, was to retaliate against
16 a civilian who in the eyes of the persons who attacked the
17 event or attempted to attack the event, had blasphemed the
18 Prophet Muhammad and it wasn't being done for law
19 enforcement purposes.

13:04:08 20 Specifically, the enhancement requires not only
21 that there be a conviction for the underlying offense which
22 we concede exists, but that Mr. Hendricks' motive was to
23 retaliate or influence the government, but what the
24 government does is they say "But because law enforcement
13:04:25 25 officers were there in the Garland event, that they

1 potentially would become targets, as well."

2 Again, it has to be related to the person's
3 purpose to retaliate against or influence the government.

4 So they're saying, "Well, if they have to shoot
13:04:42 5 law enforcement while they're there or to avoid being
6 captured or to not be arrested alive, you know, to kill law
7 enforcement during that, that's not a purpose to retaliate
8 against or influence the government." It's not being done
9 in an effort to try to change government policy or try to
13:04:59 10 punish government for the policy that it's taken in the
11 past, say, a policy that says the Islamic state would think
12 was harmful to the Islamic state or to Muslims generally so
13 there's an attack that's planned or that's done.

14 Specifically, when it comes to maybe law
13:05:21 15 enforcement officers being injured during an attack, say as
16 in the Garland case, or when there's discussion about not
17 being arrested peacefully and fighting back and things of
18 that nature, "Don't let them take you alive so that they can
19 display you," that's not a purpose to retaliate against or
13:05:39 20 influence the government.

21 That's a purpose not to be arrested peacefully, or
22 a purpose to not be arrested during the commission of the
23 offense that the purpose was for to retaliate against the
24 civilian.

13:05:55 25 So the general purpose of creating sort of this

1 off-the-grid terrorism training center or some facility or
2 something like that is too remote. It's not specific enough
3 to have the 12-level enhancement apply. Again, allowing it
4 to apply in this case would suggest that there is no
13:06:18 5 material support case where that 12-level enhancement, when
6 it applied, if because ISIS generally has -- has as one of
7 its stated goals, to retaliate against the United States or
8 the west or whatever, some sort of purpose or some desire to
9 provide material support to that entity in some instance
13:06:45 10 means that you are engaging in a terrorism act when there
11 isn't a specific act that's been alleged or proven in the
12 case, which the government obviously didn't have to do in
13 this case because of the way that Mr. Hendricks was --

14 THE COURT: Well, they really don't have to do
13:06:58 15 that, do they? The enhancement could be applied to offenses
16 such as attempt and conspiracy, right?

17 MR. BRYAN: It could -- it could be applied to
18 those offenses if there were facts in the case that showed
19 that the motive of Mr. Hendricks or the defendant was to
13:07:13 20 retaliate against United States government. That's, in
21 essence, the definition of terrorism.

22 So to retaliate against or influence, the only
23 specificity in this case dealt with a discussion about the
24 Garland, Texas attack which clearly the motive in that case
13:07:33 25 was against the event organizers and not against the

1 government, because of the belief that the event --

2 THE COURT: What about the discussion that was in
3 Baltimore that was filmed by the government, the discussion
4 that Mr. Hendricks had with the confidential informant?

13:07:47 5 MR. BRYAN: And that dealt more with the
6 generalities of training and seeing what he was willing to
7 do, what the informant was willing to do, and since I wasn't
8 part of the trial, Your Honor, I am asking for a little bit
9 more guidance.

13:08:06 10 THE COURT: Well, I know it's difficult. I
11 apologize since you weren't part of the trial, but that
12 perhaps -- without commenting further, that's probably the
13 most compelling part of the evidence against Mr. Hendricks,
14 the video/audio recording that was made with the undercover
13:08:20 15 and the discussion about what the undercover may be asked to
16 do.

17 I know that's a bit challenging for you, but
18 that's probably the most compelling part of the evidence
19 that I believe was certainly considered by the jury.

13:08:34 20 MR. BRYAN: Again, to support the material support
21 conviction, but if I -- if I recall the record well enough,
22 based upon my review of the record, again, there weren't
23 any -- there was sort of a feeling out what he was willing
24 to do, but there was no specificity. There was no actual
13:08:52 25 plan. There was nothing that was ever discussed like, for

1 instance, go to Garland, Texas and do something or something
2 like that.

3 THE COURT: Wasn't it in the nature of recruiting,
4 though? Wasn't he recruiting the undercover to engage in
13:09:07 5 future acts perhaps?

6 MR. BRYAN: Right. But in this instance, in this
7 case, there was no future -- nothing future happened
8 basically, and so the talk is one thing and an event, I
9 think -- if there were a case where there was -- they were
13:09:22 10 planning say an attack on military barracks or something
11 like that, and I think that was one of the things that was
12 discussed, but there was some specificity with trying to
13 carry out something, but since he was working with an
14 undercover, it wasn't going to be able to be carried out,
13:09:38 15 that would be a material support case where the terrorism
16 enhancement would be applicable because the motive is clear
17 in that instance that there's an intent to carry out a
18 specific event that would be in retaliation against the
19 government.

13:09:55 20 THE COURT: I think the case, at least the Wright
21 case, talks about intended to promote under 3A1.4(a), which
22 extends the enhancement to felonies, I am quoting from that
23 decision, that involved or were intended to promote federal
24 crimes of terrorism, rather than limit its application to
13:10:15 25 only those substantial offenses listed under the statute,

1 and that's the language from Wright.

2 MR. BRYAN: Right. And I think it's important to
3 note also that Mr. Hendricks -- first of all, there wasn't a
4 substantive act of terrorism that was committed in this
13:10:34 5 case, nor was there one that was even specifically planned
6 with an undercover or with anyone else.

7 And, again, if Mr. Hendricks could have been
8 charged in the Garland attack, I think he would have been
9 charged in the Garland attack, but I don't think there's any
13:10:50 10 sufficient evidence, although there may be evidence that
11 there was communication with one of the Garland attackers,
12 that's the same for the undercover FBI agent that had
13 communication with that person, as well, but there's no
14 specific evidence in the record that Mr. Hendricks knew that
13:11:05 15 was going to take place or somehow planned in that regard.

16 So I think the problem is the nature of this
17 conviction. There are lots of terrorism cases where the
18 government even creates an event where then the person, they
19 take them down the path to just before they -- the bridge
13:11:23 20 bombing case that was tried in Judge Dowd's courtroom where
21 they take them down the path to where they're actually --
22 they believe they're exploding a bridge in Brecksville,
23 Ohio. When they press the button, but in reality, obviously
24 because the government was in on it, nothing happened.

13:11:39 25 Nothing in Mr. Hendricks' case came close to

1 anything like that. In fact, the facts in Mr. Hendricks'
2 case reflect the communication with an undercover agent for
3 a period of about three months, and admittedly those
4 communications were in support of the ISIS ideology,
13:11:59 5 creating a training facility off the grid in the United
6 States, recruiting members, but there wasn't anything
7 specific that was planned in that three months. And then
8 after that, there was another year and a half before the
9 government itself even shows to arrest Mr. Hendricks based
13:12:14 10 upon the communications that he had with the undercover a
11 year and a half before.

12 So there is no evidence that Mr. Hendricks was
13 ever going to carry out a specific attack or do anything of
14 that nature, and because of the nature of the evidence in
13:12:31 15 this case, there's no proof of his -- of an intent to
16 retaliate against the government for, you know, in a
17 specific way as compared to sort of his general support
18 group for the ISIS ideology.

19 THE COURT: Thank you.

13:12:47 20 Counsel for the government?

21 MR. SHEPHERD: Yes, Your Honor. We would dispute
22 several of the arguments made by defense counsel today, Your
23 Honor. I believe defense counsel first is trying to impose
24 an extra burden on the government for this enhancement than
13:13:04 25 actually applies with the idea there needs to be, if I

1 understands him, some kind of specific act we can point to.

2 Where the real issue is one of intent, not of
3 whether there was a specific attack or not, attack or
4 action, because as the court noted, the enhancement can
13:13:22 5 apply to attempt crimes, can apply to conspiracies. I think
6 the defense counsel also is asking the court to look too
7 narrowly at the conduct in the case.

8 The government's theory of the case, as we
9 expressed at trial, and I think as we've presented, this was
13:13:37 10 Mr. Hendricks' efforts to recruit a cell on behalf of ISIS,
11 to commit attacks within United States, and that his
12 intention in doing that, I don't think you can separate from
13 the goals and purposes of ISIS, number one, and then even
14 specifically if you're going to create an extension of ISIS
13:13:57 15 within the United States, if you're going to create a group
16 to train -- a facility to train, you're necessarily I think
17 implicit and that is you're acting in a manner to, if you
18 are going to expand ISIS, in which you're going to seek to
19 influence or affect the conduct of the United States
13:14:13 20 government.

21 And if you're seeking to support ISIS and extend
22 ISIS which has noted its efforts or made public its efforts
23 to retaliate against the United States for actions of the
24 United States in the Middle East for being a part of a
13:14:29 25 coalition that's attacked ISIS, I don't think you can

1 separate those.

2 We're not asking the court to find that in every
3 material support case the terrorism enhancement
4 automatically applies, but I think if you look at the facts
13:14:41 5 of this case and trying to create -- recruit a cell of
6 members in the United States to support ISIS, to expand
7 ISIS, to commit attacks on behalf of ISIS, along with that,
8 his intent is also to follow ISIS ideology and necessarily
9 that includes trying to influence the government of the
13:15:02 10 United States.

11 I think if you look specifically at just the
12 Garland attack, even in isolation, which we're not asking
13 the court to do, but even in isolation, the Garland attack
14 and his efforts afterwards to cause the posting of a
13:15:15 15 document claiming credit for it, there's an element of
16 intimidation and coercion of those who would provide
17 security for and who would host similar events.

18 I don't think you can limit that on focus of all
19 that was involved was this one attack against this one
13:15:30 20 speaker. I think you have to look at the evidence more
21 broadly, Your Honor. And certainly, by a preponderance of
22 the evidence, we believe that the evidence at trial that we
23 pointed to in our sentencing memorandum supports the
24 enhancement.

13:15:43 25 THE COURT: Well, I know the precedent is -- the

1 precedent is preponderance. Is that -- I hate to ask, but
2 you think that is a sufficient standard when you're asking
3 me to apply this enhancement, which could ramp up the
4 sentence substantially?

13:16:00 5 MR. SHEPHERD: Your Honor, I think as a matter of
6 law, it is.

7 I think as a matter of the evidence in this case,
8 we would submit we've shown more than a preponderance, that
9 both the expert testimony about ISIS, the specific
13:16:17 10 communications we pointed to in our sentencing memorandum,
11 the discussions with the informant in Baltimore, the
12 statement posted after Garland trying to take credit for the
13 Garland attack and threatening additional attacks, and all
14 of the other evidence that the court heard in the case and
13:16:35 15 that we pointed to in our sentencing memorandum, would be
16 more than a preponderance, but legally, yes, Your Honor,
17 even though it's a big enhancement, that is what the case
18 law provides.

19 THE COURT: All right. Thank you.

13:16:48 20 For the record, the court would note I've
21 carefully considered the matter. We'll put up an order in
22 writing as to this particular issue, this objection and the
23 enhancement. Of course the enhancement is fact driven, fact
24 related.

13:17:02 25 Having presided over the trial, I am aware of much

1 of the evidence in the case. I need not recount it or set
2 forth all here this afternoon in its entirety. But suffice
3 it to say that, at least in my view, the government has
4 established by a preponderance of the evidence, if not at a
13:17:20 5 higher standard, that the defendant intended to engage in
6 activities that would influence the government.

7 His intention, at least as part of the case, was
8 to recruit individuals in this country to form a cell of
9 ISIS or ISIL supporters, to train recruited individuals to
13:17:39 10 commit acts of violence on behalf of ISIS or ISIL as it's
11 referred to, and the other facts that we will put forth in a
12 written order, at least in my view, support the enhancement.

13 The actions of the defendant were not limited to,
14 again, the Garland, Texas, so-called Garland, Texas event,
13:17:58 15 but there is sufficient evidence to support the enhancement
16 by a preponderance of the evidence, if not a higher
17 standard, and we will detail that in writing.

18 Having said that, the court, of course, is to
19 properly calculate the advisory guidelines, we will do that,
13:18:11 20 and then we will turn to a discussion about the kinds of
21 sentence the court should impose, the reasons for the
22 court's sentence.

23 Having addressed the objection, under the statute,
24 the statutory provisions here for Count 1 is zero to 15
13:18:26 25 years. Count 2 is zero to 15 years. The guideline

1 provisions are -- 360 months is the guideline provisions
2 that would apply in this case based upon the enhancement and
3 that calculation is set forth at page 7 and page 8 according
4 to the recommendation of the probation officer.

13:18:50 5 Supervised release is zero to life as to Counts 1
6 and 2. Of course probation is not an option, and \$200 is
7 the supervised release.

8 Other than the objection the court has just
9 addressed, counsel for the government, do you have any
13:19:10 10 additional objections to the court's advisory guideline
11 calculation?

12 I believe the guideline is -- his total offense
13 level is 38 with a Criminal History Category VI, and the
14 guideline, again, at the highest end, would be 360.

13:19:25 15 MR. SHEPHERD: No objection, Your Honor.

16 THE COURT: Other than the objection that you've
17 previously raised and preserved for the record, Mr. Bryan?

18 MR. BRYAN: No other objections, Your Honor.

19 THE COURT: All right. Thank you.

13:19:34 20 With regard to the kind of sentence the court
21 should impose, Counsel, I will call to your attention before
22 we hear from Mr. Hendricks, something that is I think
23 somewhat relevant, perhaps not directly relevant, but the
24 parties have cited in their briefing to United States versus
13:19:53 25 Wright, and of course there were Codefendants Baxter,

1 Stevens, Hayne and Stafford, the so-called bridge bombers
2 who placed what they believed to be explosives under the
3 Route 82 bridge in Brecksville some years ago as part of the
4 Occupied Cleveland movement.

13:20:13 5 And I went back and looked at the sentencing in
6 those cases. Mr. Wright's guideline range is 324 to 405
7 months. He was sentenced to 138 months.

8 Mr. Baxter's guideline was 262 to 327 and he was
9 sentenced to 117 months.

13:20:28 10 Mr. Steven's guideline range was 188 to 235
11 months. He was sentenced to 97 months.

12 Mr. Hayne was sentenced at 72 months with a
13 guideline range of 262 to 327.

14 Mr. Stafford who went to trial as part of this
13:20:46 15 case, guidelines was 324 to 405, and he received 120 months.

16 Now, comparing and contrasting that case and the
17 kind of sentence that were imposed upon individuals who
18 actively planted what they believed to be a bomb on a bridge
19 over which hundreds, if not thousands, of people travel each
13:21:08 20 and every day, how is it or why is it that the government
21 would be asking me for 30 years in this case when I compare
22 the terrorist activities of these other individuals here not
23 too many years ago?

24 And correct me if I am wrong, the government did
13:21:26 25 not appeal any of that sentences I referenced earlier. So I

1 -- candidly, while disparity is national, but I ask myself
2 should I give Mr. Hendricks 30 years when I see these other
3 individuals with the extensive activity, at least in my
4 view, direct activity to try and bring down a bridge here in
13:21:46 5 the Northern District as against Mr. Hendricks who obviously
6 his actions were in support of a terrorist organization,
7 certainly not Occupied Cleveland, but so how is it, or why
8 is it I should not consider the sentences these other
9 defendants received without objection or without --
13:22:05 10 certainly without appeal by the government?

11 So I will just call that to your attention so you
12 can certainly be free to argue and explain to me why
13 Mr. Hendricks isn't entitled to some downward variance from
14 30 years in this case when these other individuals received
13:22:21 15 such nominal -- at least in my view, relatively nominal
16 sentences for actions that some could argue was even worse
17 than Mr. Hendricks.

18 So what is the government's position regarding
19 what type of sentence I should impose for Mr. Hendricks,
13:22:35 20 please?

21 MR. SHEPHERD: Your Honor --

22 THE COURT: Maybe we should -- I am sorry to
23 interrupt. Maybe we should hear from Mr. Hendricks if he's
24 going to address the court before I hear argument. That way
13:22:44 25 I will have a better understanding whether he wishes to --

1 whether or not he wishes to make any statement and how if
2 that statement might affect sentencing in the matter.

3 Mr. Hendricks, do you wish to make any statement
4 at all on your own behalf?

13:23:02 5 MR. BRYAN: Your Honor, I will be able to speak on
6 behalf of Mr. Hendricks.

7 THE COURT: Certainly, I will -- you can go either
8 way. You can go first, or Mr. Hendricks can go first.
9 Whichever you would like.

13:23:13 10 MR. BRYAN: Mr. Hendricks is asking me to go
11 first, Your Honor.

12 THE COURT: All right. You may be seated,
13 gentlemen, until -- Mr. Hendricks, until your attorney
14 completes the presentation and then -- you can be seated if
13:23:24 15 you would like since you're in custody and use the
16 microphone, sir, if you would.

17 Mr. Bryan.

18 MR. BRYAN: So, Your Honor, at this stage, I am at
19 allocution now, and we're discussing the 18, U.S.C., 3553(a)
13:23:35 20 factors?

21 THE COURT: Yes. If you would like to incorporate
22 the discussion as to the sentences in Wright at all, you can
23 do that, too.

24 MR. BRYAN: I can do that, Your Honor, and I don't
13:23:45 25 want to -- I don't want to push it too far, but there's

1 another conspiracy case. This was a conspiracy to kill
2 American soldiers abroad that I was part of in this district
3 as well and it was in Toledo, Ohio, and there were three
4 defendants in that case and the main defendant was a
13:24:03 5 gentleman by the name of Mohammad Amawi, and I, along with
6 Timothy Ivey, were main counsel for Mohammad Amawi at trial.
7 And the secondary defendant was a gentleman by the name of
8 Marwan El-Hindi, and the third gentleman was a gentleman by
9 the name of Wassim Mazloun.

13:24:23 10 And in order, Mr. Amawi, although all of them
11 faced guidelines sentences of life in prison, because of the
12 same terrorism enhancement and other enhancements that
13 applied in that case, they were sentenced accordingly.

14 Mr. Amawi received a sentence of 240 months or 20
13:24:39 15 years. Marwan el-Hindi received a sentence of 12 years, and
16 Wassim Mazloun received a sentence of eight years, all
17 imposed by Judge Carr in that instance.

18 There are -- in fact, there's more similarities
19 between the Amawi case and Mr. Hendricks case than there are
13:24:59 20 even between Mr. Hendricks case and the bridge bombing case.
21 And I would agree with Your Honor that the culpability of
22 the defendants in that case is reflected more strongly in
23 the fact that it wasn't all aspirational. It was something
24 that actually was made concrete by the nature of the
13:25:15 25 government's investigation against the attempted bridge

1 bombers, and that was they gave them an opportunity, albeit
2 it was undercover opportunity, to actually go through where
3 what they had articulated and what their intent was.

4 In both the Amawi case and Mr. Hendricks case,
13:25:33 5 there were undercover law enforcement officers. In
6 Mr. Hendricks' case, it was an FBI agent, and Mr. Amawi's
7 case, it was an informant that was being used by the FBI to
8 infiltrate the Toledo area. Muslim community, in an
9 essence, what you have was a lot of conversation taking
13:25:52 10 place between informants and the targeted individual, and
11 based upon the conversations that were made, and that
12 happened during those investigations, conspiracy cases then
13 were later brought against the defendants.

14 In Mr. Hendricks' case, the first indictment
13:26:12 15 against him was a single count of conspiracy for conspiracy
16 to provide material support to a foreign terrorist
17 organization, which carried with it a maximum statutory
18 penalty of 15 years.

19 The government later superseded Mr. Hendricks'
13:26:28 20 case and added an attempt charge which also has a statutory
21 range of zero to 15 years, and now the government's arguing
22 that because the guideline exceeds 15 years that the court
23 can stack those sentences to arrive at the guideline range.

24 I would argue for many reasons, but one of the
13:26:51 25 reasons I would argue that that is inappropriate based upon

1 the facts of this case is that Mr. Hendricks could not have
2 committed a conspiracy to provide material support to a
3 foreign terrorist organization without attempting to do the
4 same conduct. The offense conduct isn't even -- isn't
13:27:11 5 different between the two offenses. It's basically the
6 same.

7 I would suggest that an attempt could be a lesser
8 included offense of conspiracy, although conspiracy would
9 never be a lesser included offense of attempt, but it's the
13:27:27 10 same offense conduct. It's the communications that are
11 being articulated, this aspirational goal of potentially
12 creating a terrorist cell within the United States, even
13 though there's no evidence that Mr. Hendricks took any
14 material steps toward doing that other than some desire to
13:27:47 15 purchase some land out west.

16 He didn't have the ability to and never had the
17 money to -- in fact, Mr. Hendricks, there's no evidence in
18 the case, that he even had any firearms, whether they would
19 be AK47s or anything else. He had nothing as it relates to
13:28:02 20 the things that were discussed between Mr. Hendricks and the
21 undercover agent. None of the tools of the trade, so to
22 speak, were found with Mr. Hendricks.

23 In fact, I don't know why, but the government
24 never even sought a search warrant of Mr. Hendricks' home
13:28:21 25 that would have been served contemporaneous to his arrest

1 warrant. They never even attempted to find these items in
2 Mr. Hendricks' possession. In fact, they waited a year and
3 a half after Mr. Hendricks' activity with the government had
4 ceased to even arrest him, so if there's some concern that
13:28:42 5 Mr. Hendricks is a danger, was an imminent threat in the
6 community, was an imminent threat to carry out anything that
7 was even discussed, it's my belief that the government would
8 have treated his case differently than it did.

9 So what we have are two inchoate offenses.
13:29:02 10 Offenses that don't, you know, have specificity about it.
11 There wasn't a bridge bombing plot. There wasn't even a
12 plot to target anything that was discussed with
13 Mr. Hendricks, nor the demonstration of the ability on
14 Mr. Hendricks' part to be able to carry out anything.

13:29:22 15 So as the court is required to do, to look at the
16 nature and the circumstances of the offense and the history
17 and characteristics of Mr. Hendricks, to arrive at a
18 sentence that's sufficient, but not greater than necessary,
19 to accomplish the purposes and goals of sentencing, it's our
13:29:41 20 position that the nature and circumstances of the offense
21 itself, albeit it's a material support case, that albeit
22 even has a terrorism enhancement, are ones that suggest that
23 the threat of imminent harm never existed, or the threat of
24 any real harm ever existed.

13:30:00 25 In fact, there's evidence that if Mr. Hendricks

1 even had an intent to do what was discussed with the agent
2 in an undercover capacity, that he had abandoned that intent
3 to follow through on anything of that nature, because for a
4 year and a half after those conversations took place,
13:30:20 5 Mr. Hendricks went about living a law-abiding life with his
6 family and in doing everything that he could to provide for
7 his family.

8 Back in the Amawi case, one of the things I
9 mentioned to Judge Carr at the time I think is appropriate
13:30:43 10 in this case as well, I drew an analogy, and it seemed silly
11 when I first start talking about it, but I really think hits
12 home, and that is there was a movie that was I guess popular
13 some years back involving Tom Cruise by the name of Minority
14 Report. I don't know if the court seen that movie or if
13:31:03 15 anybody else in this room had seen that movie, but it's not
16 important that you've seen the movie to get the point.

17 And that was, it was a science fiction thriller,
18 and the whole notion of the movie was that they had
19 developed a technology in the future to prevent future
13:31:19 20 crime. So instead of waiting until a crime was committed
21 and arresting someone for committing that crime, they had a
22 system that was developed with a computer, and some people
23 who were able to tell the future events that would raise an
24 alert when something was about to happen, and when something
13:31:38 25 was about to happen, the police sprung into action and they

1 would arrest a person prior to the event actually taking
2 place and usually it was while the person was on their way
3 to commit the crime.

4 The movie is called the Minority Report because
13:31:52 5 the company that had created this system of being able to
6 predict future crime had suppressed a minority report about
7 its accuracy, that it wasn't always accurate, that it failed
8 many times to be unable to predict the future.

9 I am arguing that by analogy in Mr. Hendricks'
13:32:12 10 case, because it's very similar to these investigations,
11 these types of investigations that people like Mr. Hendricks
12 are targeted in and people like Mr. Amawi years ago were
13 targeted in, there's no way to tell if anything ever would
14 have happened, and that's good, and I guess that's sort of
13:32:35 15 the good thing behind conspiracy law. We shouldn't have to
16 sit back and wait for something bad to happen to be able to
17 hold someone accountable for planning with others, to engage
18 in conduct with others to do it. But the law also
19 recognizes that facts vary from case to case, and I would
13:32:56 20 argue and submit to the court that Mr. Hendricks' case is
21 that case like Mr. Amawi's that demonstrates that nothing
22 likely would or could have ever happened, albeit the
23 evidence was sufficient to convict him of conspiracy.

24 And I would argue the unlikelihood of a violent
13:33:18 25 future event or of Mr. Hendricks being involved in something

1 that would have likely resulted in some type of harm is a
2 mitigating factor in and of itself, and that he should not
3 receive a 30-year sentence for something that the government
4 believes could have happened, but the evidence suggest
13:33:40 5 probably never actually would have happened.

6 And, again, I am drawing the court's attention to
7 the fact that for a year and a half after the communications
8 with the undercover, Mr. Hendricks never did anything
9 inappropriate.

13:33:55 10 That sort of segues me to just talking about Mr.
11 Hendricks, his history and characteristics. He's a Criminal
12 History Category I, because other than these events, he has
13 lived a law-abiding life, and he's lived a good life, and
14 that good life is reflected by the familial support that he
13:34:12 15 has behind him. His mother wrote a letter on his behalf.
16 There's another letter submitted on his behalf.

17 Also present in court today is Mr. Hendricks' wife
18 and some of his stepchildren and other friends. But coming
19 all the way from the United Kingdom is Mr. Hendricks'
13:34:28 20 daughter, Mariam, who just waved to the court. And Mariam
21 and Mr. Hendricks -- Mariam's mother and Mr. Hendricks met
22 quite some time ago. Mariam is now 16 years old. She was
23 born in the United States, and she lived in the United
24 States for the first two years of her life, and then she
13:34:49 25 moved with her mother back to the United Kingdom where her

1 mother was from, and she's been living in the United
2 Kingdom, but has since not just came to Mr. Hendricks'
3 sentencing hearing, but has came to the United States as an
4 American citizen to try to take root in the United States
13:35:06 5 and remain in the United States in large measure because of
6 her father. That's because of the nature of the
7 relationship that he's had with his daughter, albeit it's
8 been long distance now for a long period of time.

9 I think the court itself recognized,
13:35:26 10 notwithstanding the conviction in this case, much of
11 Mr. Hendricks' good nature, by the way he's conducted
12 himself during earlier proceedings, by the way he's
13 conducted himself in not only the courtroom, but even by the
14 way that you can see that he's conducted himself over his
13:35:45 15 life.

16 And that when the government talks about
17 recidivism in terrorism cases could be higher and things
18 like that, I think what they're really doing is just trying
19 to draw on the strength of the emotion that surrounds --
13:36:01 20 well, both terrorism prosecution would suggest that the
21 person who's accused or convicted of such an offense is
22 irredeemable and they will not be able to turn their ways
23 and to rehabilitate themselves and put themselves in a
24 position where they should be able to function in society.

13:36:24 25 I believe that Mr. Hendricks -- not his criminal

1 history, his lack of criminal history, but his history and
2 characteristics reflects that he does have the character,
3 notwithstanding his conviction in this case, to take
4 advantage of whatever time the court imposes upon him while
13:36:43 5 incarcerated to continue to better himself, not only for
6 himself, but for himself and for society for when he is
7 eventually released, and that it is not necessary to deprive
8 him of his liberty for the next 30 years, or even for the
9 next 15 years.

13:37:00 10 We ask the court not to grant the enhancement, the
11 terrorism enhancement, which would have placed Mr. Hendricks
12 in a guideline range of 63 to 70-month months, but we didn't
13 ask the court to impose a sentence within that guideline
14 range.

13:37:22 15 We looked at the guidelines, which suggest that
16 because of the nature of the conviction, the nature of the
17 offense, an upward variance may be appropriate if the court
18 were to find that the 12-level enhancement shouldn't have
19 applied.

13:37:39 20 And the court even said to Mr. Shepherd before,
21 just the weight of the evidence when the guideline range
22 itself can subject this person to so much more time, all you
23 have to prove that by is by the weight of the evidence and
24 the court did acknowledge that there was more evidence to
13:37:59 25 support than just the weight of the evidence to support the

1 enhancement.

2 But I think, and I don't want to be presumptuous,
3 but I think what the court is concerned about is applying
4 this 12-level enhancement willy-nilly will not arrive at a
13:38:17 5 just sentence in Mr. Hendricks' case, which the law defines
6 is a sentence that's sufficient, but not greater than
7 necessary, to accomplish the purposes and goals of
8 sentencing, which include holding Mr. Hendricks accountable,
9 rehabilitation, sentencing disparity and the like.

13:38:35 10 And so we argued for, and even conceded to a
11 sentence of 120 months by looking at the entire case, would
12 be a sentence that is sufficient, but not greater than
13 necessary, acknowledging that from our perspective,
14 Mr. Hendricks went to trial. He has a right to appeal his
13:39:02 15 case. He's not here to make any admissions today. I don't
16 think that would be prudent for him to do that.

17 But just acknowledging the facts that were found
18 by the jury in this case, in looking at them objectively, we
19 believe that a sentence of that amount would be 120 months,
13:39:19 20 would be sufficient, but not greater than necessary.

21 THE COURT: All right. Thank you, Counsel.

22 Mr. Hendricks, what, if any, statement would you
23 like to make on your own behalf, and because you're in
24 custody, I know you're restrained, you can remain seated if
13:39:31 25 you would like. Just use the microphone.

1 If you like to stand, you can do that as well. It
2 might be a little bit uncomfortable.

3 THE DEFENDANT: I will stand.

4 Sir, I've worked hard to keep my life a certain
13:39:53 5 way. I have never got into drugs. I never got into those
6 things that they get people in jail. I've worked hard to
7 keep myself out of where I am today.

8 Nevertheless, I am here, on the other end of the
9 law, and always in my mind, every black man in America --
13:40:27 10 and I don't want bring up race issues -- we always have in
11 our head, "One day we're going to end up in prison." And
12 I've actively tried not to get here where I am.

13 I've taught my daughters that, my children that,
14 society that. I used to come to the prisons to tell them,
13:40:51 15 you know, remain positive, to never end up in this place.
16 And I understand that I'm not going to talk about my case,
17 the past.

18 I want to talk to you, sir, about my future. I am
19 relied on by so many people, my mother, my daughter, my
13:41:22 20 children, a lot of people in the community.

21 Sir, I am not the -- I'm not the person that my
22 accusers accuse me to be. I wish I could have said that a
23 lot during trial, but nevertheless, I do plan to pursue that
24 in the future, sir.

13:41:49 25 But I just want to talk to you about my future. I

1 have -- I am totally -- I am totally sorry for any
2 inconvenience that I caused you.

3 I am asking you, sir, I am asking the creator and
4 the merciful, the most merciful, to give me mercy, first and
13:42:13 5 foremost. And I am asking you if there's any mercy that I
6 can have, or anything that I could get, any mercy that I can
7 get to give me another chance to get out there and prove
8 myself. To say that I will never come here is an
9 understatement. You would -- you will never see me again.

13:42:39 10 And I just want to ask you for mercy, anything you
11 can give me, sir. I would appreciate that. And I will be
12 very thankful. I've learned a lot since being in these
13 chains. I understand the law a lot better. I'm a young
14 man, but I still want to see that I want future time with my
13:43:07 15 children and my wife and my mother.

16 Anything you can give me, I would appreciate it.
17 Thank you so much.

18 THE COURT: Thank you, Mr. Hendricks.

19 Counsel for the government, what's the
13:43:21 20 government's position regarding the kind of sentence the
21 court should impose?

22 MR. SHEPHERD: Your Honor, as we stated in our
23 sentencing memorandum, our position is requesting the
24 maximum sentence, Your Honor.

13:43:32 25 I would like to address first the reference the

1 court made to a prior case in the Wright, Stafford, Hayne,
2 Stevens and Baxter case, Your Honor. I believe that was one
3 of the questions the court asked before, statements by the
4 defendant and defense counsel.

13:43:51 5 THE COURT: Just so it's clear, I want to make
6 sure it's clear for the record for any reviewing court, I
7 recognize disparity is national in nature, so I want to make
8 that clear. But this case, this Wright case involving the
9 so-called bridge bombing is a case cited to me by the
13:44:09 10 parties. It's relevant as it relates to the guidelines, but
11 it's also relevant when we talk about proportionality and
12 fairness, at least in my view, fundamental fairness, as
13 compared and contrasted. These are you could argue domestic
14 terrorists.

13:44:26 15 The fact that Mr. Hendricks is accused of being
16 involved with ISIL, again, is -- it is what it is, but when
17 you compare the sentences imposed on individuals who were
18 actively involved in trying to take down a bridge over which
19 thousands of people travel every day, and then I compare
13:44:46 20 that with Mr. Hendricks and his actions, I have to ask
21 myself the question, 30 years, as opposed to the sentences
22 that were imposed in the other cases I just referenced?

23 MR. SHEPHERD: Your Honor, first, and I think as I
24 get into this, I hope to highlight what -- one point, which
13:45:06 25 is I think it's very -- I think it's very dangerous in a

1 sentencing like this, to when you compare these cases to do
2 so in a way where you don't lose sight or -- or it's very
3 difficult just comparing the raw sentences of one case with
4 the potential raw sentence in this case without really
13:45:25 5 digging into the individual factors and characteristics of
6 that particular case.

7 So, for example, Your Honor, and first I will
8 concede, I was not the prosecutor on the Wright case, so I
9 don't have all of the details on hand, but just taking a
13:45:42 10 review of the Wright decision and the Stafford decision,
11 there are some differences right there that I can point to
12 that are different in their case than from the defendant.

13 Of the four defendants -- of the five defendants
14 in the Wright case, Baxter, Stevens, Hayne and Wright, they
13:45:53 15 did all plead guilty. I believe that is a very important
16 fact, especially in the context of a terrorism case, where
17 without a plea of guilty, without any statement of remorse,
18 when you are assessing the future dangerousness of people, I
19 think that idea that somebody has plead guilty, has
13:46:18 20 presumably in that case, although the record is not clear
21 from the decisions, expressed remorse, I think that's an
22 important distinction between a defendant who has gone to
23 trial and has made -- even today no expression of remorse
24 for his conduct.

13:46:29 25 And what you heard from the defendant was,

1 although a very, very I think good statement of sort of how
2 he says he will never in the future commit this conduct
3 again, or be in trouble, actually, to be in trouble again,
4 there isn't a statement of, "Here's what my conduct was that
13:46:49 5 was wrong in this case, Your Honor."

6 THE COURT: I wish -- Counsel, with all due
7 respect, I wish that I could have heard more from
8 Mr. Hendricks, but as I am sure you're aware, I am sure he's
9 acting in some respects with the advice of counsel. There's
13:47:01 10 issues for appeal, and so I think he's a bit hamstrung as to
11 what he can say to me. That's my sense. I, like you, wish
12 I could have heard much more, but I understand why he did
13 not go any further, but in any event, go ahead.

14 MR. SHEPHERD: Your Honor, and I agree with that.
13:47:17 15 There probably is a reason why he didn't go further today,
16 but I think it is important the idea of -- there's no
17 renunciation of ideology that I think would be important in
18 assessing the defendant in a case like this.

19 I think it's also important the specific sentence
13:47:33 20 you referenced, Mr. Hayne, according to the reported
21 decision, had testified at some point in the court
22 proceedings. Mr. Stafford, who went to trial, there's
23 reference to his mental health issues as being a factor that
24 was described in the Stafford opinion, as well in the Court
13:47:55 25 of Appeals opinion.

1 I think -- I am sure there's other differences in
2 the weeds of their individual characteristics that are
3 important, but one thing that concerns me in the court's
4 question is this concept of because one judge previously
13:48:12 5 imposed sentences in a case, which the government did object
6 to at the time, although I concede we didn't appeal the
7 substantive reasonableness of those sentences, that it
8 should somehow bind future judges in cases that have some
9 similarities to impose a similar sentence.

13:48:28 10 THE COURT: I'm not bound at all. I understand
11 that. I am sorry to interrupt you, but I'm not suggesting
12 in any way I am bound by the sentences in those cases. I am
13 not. I understand that completely.

14 But when I think about -- when I compare just
13:48:42 15 generally the actions of those defendants, the actions they
16 were willing to take, placing a bomb which they thought was
17 an active bomb, which thank goodness it was inert, and
18 willing to take that action, a terrorist act clearly, it
19 would have probably cost hundreds of lives, if not more, as
13:49:02 20 compared and contrasted to Mr. Hendricks as a recruiter,
21 someone who's attempting to form a cell -- and I heard the
22 trial. I heard all the evidence against him.

23 But I would have to ask myself, but those
24 defendants, even with acceptance, we go from 324 to 405,
13:49:18 25 Mr. Wright, who was I think perhaps the most culpable, gets

1 138 months. Mr. Baxter is 262 to 327 gets 117. Mr. Stevens
2 is 188 to 235, I am talking about their guidelines, he gets
3 97. And then Mr. Hayne, 262 to 327 and gets 72.

4 And I am repeating all of this, just because I
13:49:43 5 can't quite frankly get over it in some respects, and
6 Mr. Stafford goes to trial, 324 to 405, he gets 120 months,
7 and the government doesn't even appeal. Doesn't say,
8 "Judge, wait a minute. We think this is wrong." There's a
9 terrorist enhancement there and there's terrorist actions.
13:49:59 10 Clear.

11 I have to ask what's fair just in general context
12 with Mr. Hendricks.

13 MR. SHEPHERD: Your Honor, I can't -- I'm not
14 going to attempt to justify the sentences that were imposed
13:50:14 15 in the Baxter, Stevens, Hayne, Wright and Stafford case,
16 Your Honor, because -- I don't agree with those sentences if
17 you are -- as a personal matter of what I thought -- think
18 should have been imposed, and I can't speak as to why the
19 government didn't appeal those sentences.

13:50:29 20 But I don't think our failure to appeal should
21 somehow guide the sentence in this case, Your Honor.

22 I would also point to some other cases. My
23 colleague pointed to the Amawi case, which is another
24 terrorism case out of Toledo. Recently there was a case
13:50:49 25 sentenced in Cleveland by Judge Polster of Terrence McNeil,

1 who received a 20-year sentence, and his crimes were
2 solicitation and the posting of threats online against U.S.
3 service members.

4 He received a 20-year sentence after Judge Polster
13:51:04 5 considered all of the factors, and there's a terrorism
6 enhancement there, all of the factors and the facts in that
7 case. Mr. Al-Ghazi we have who testified in this case
8 received a 16-year sentence. He also had additional
9 offenses in addition to his material -- attempted material
13:51:18 10 support charge such as being a felon in possession of a
11 firearm.

12 The point I am making, Your Honor, is that in
13 looking at the individual facts of matters like the Baxter
14 case, like this case, that there are individual distinctions
13:51:36 15 that I am sure could be developed between each one, instead
16 I guess I would like to try and point the court to the
17 reasons why in this case we think the defendant is worthy of
18 the 30-year sentence, and hopefully move the court away from
19 the concern about the Wright case.

13:51:53 20 Because a couple -- I think the salient points
21 about Mr. Hendricks' conduct in this case, first
22 Mr. Hendricks' efforts to create a cell to commit attacks in
23 the United States. Now, we don't know ultimately what
24 damage would have been done had he been fully successful on
13:52:09 25 that, but I think it is important for the court to consider

1 and this is a distinction with the local group of plotters
2 in the bridge case, that he was pulling together people from
3 different parts of the country, pulling together -- he
4 traveled to Baltimore to meet with one person. He had been
13:52:23 5 online with Mr. Al-Ghazi here in Ohio. He had been online
6 with the undercover who he believed was out west somewhere.
7 He had been online with Ms. Amaro who was in Louisiana, that
8 it's this active recruiting and bringing people from around
9 the country, otherwise isolated ISIS supporters is
13:52:43 10 incredibly dangerous and is a distinction between the
11 plotting that was done in the bridge case.

12 And even though, as the court pointed, that case
13 got to the point of them pushing the button on what they
14 believed was a bomb, in this case, if Mr. Hendricks had been
13:52:59 15 successful in bringing a group together to engage in
16 military training on an isolated plot of land as the
17 evidence showed and then to further commit attacks to behalf
18 of ISIS, the damage could have been just as severe or
19 greater, Your Honor.

13:53:14 20 THE COURT: I'm sorry. Go ahead. Could have
21 been, but I am sorry, he never had -- at least based on
22 listening to all of the evidence, he never really had a
23 legitimate chance of doing that. He didn't have the money.
24 He didn't have the funds. He didn't have the resources. He
13:53:29 25 really didn't have the wherewithal, and the most serious

1 part of this case was his activity online and perhaps, you
2 know, inspiring others to get involved in this activity.

3 Again, we're back in 2014, 2015. Let's put this
4 in context. So that's probably the most serious part of his
13:53:46 5 actions, but he never really had the present ability to put
6 together a training facility. We heard all the evidence.
7 He's out traveling around trying to get land or find land,
8 live off the grid. He never had the ability to do that
9 effectively. He didn't have the money, the resources, or
13:54:02 10 the wherewithal to do it. So the biggest concern was his
11 activity online.

12 Am I wrong?

13 MR. SHEPHERD: Well, Your Honor, I think they're
14 both twin concerns. I think what he had the greatest
13:54:15 15 capability of doing at the time were his online activities.
16 I won't dispute that there's no evidence of him being
17 incredibly wealthy or anything like that, but I think it's
18 unclear, because, in fact, he spotted surveillance in May of
19 2015. I think that was clear. I think it would be
13:54:36 20 speculation to say he would have been unable to follow
21 through on any of his plans.

22 THE COURT: Was there any evidence that he was
23 able to do that? I didn't see any evidence or hear any that
24 he was going to be able to do just what you're alleging he
13:54:50 25 could do, that is, create some cell? I mean he has

1 discussions and some sort of pie in the sky sort of idea,
2 but I never saw any evidence that he ever had sufficient
3 money to even buy property on Ebay, as we heard testimony
4 about that action. He didn't have the money to buy, to pay
13:55:10 5 2 or 3, 4 or 5,000 out west, did he?

6 MR. SHEPHERD: Your Honor, I believe he had sold a
7 business in the fall of 2014. I don't remember the exact
8 dollar value. There was a period of which he did have some
9 money in the fall of 2014 where he had sold I believe a cell
13:55:33 10 phone business and obtained approximately -- if I may ask
11 for a minute.

12 THE COURT: Certainly.

13 MR. SHEPHERD: Your Honor, I don't have the exact
14 amount in front of me. But he sold a business and did have
13:55:45 15 some money in the fall of 2015 shortly before he had the
16 discussions with the land owners about buying the land.

17 But I also would hope the court isn't discounting
18 the ability to recruit people online and ultimately bring
19 them together in person doesn't require a ton of money
13:56:06 20 either. We saw an example of that with the online
21 recruitment of the CHS he eventually met in person in
22 Baltimore.

23 That type of online recruitment turning into an
24 in-person meeting doesn't require extensive funds. It
13:56:20 25 doesn't require extensive funds to take that and go beyond

1 just meeting somewhere and talking online, because the cost
2 of obtaining firearms isn't necessarily prohibitive to
3 someone who's working, and I think --

4 THE COURT: Mr. Hendricks never had any firearms,
5 did he?

6 THE DEFENDANT: No, sir.

7 MR. SHEPHERD: Not that we know of, Your Honor,
8 other than the statements that he did, which --

9 THE COURT: But we never found any firearms or had
10 any evidence that he had any type of AK47 assault rifles,
11 pistols, none of that was ever discovered in his presence or
12 in his possession?

13 MR. SHEPHERD: That's correct, Your Honor.

14 But, Your Honor, the point I was making, though,
15 was the ability to bring a group together and obtain arms
16 doesn't cost a prohibitive amount of funds.

17 And I think in the context of how ISIS was
18 operating in 2015, and the expert testimony about how they
19 operated online, the idea of saying that he was just an
20 online operative, I think is too -- discounts the danger
21 inherent in that and that that is how ISIS was creating
22 people was online, and he was certainly a part of that, and
23 the goal to -- and the goal to create a group here to extend
24 ISIS's operations in the United States in the committed
25 attacks is serious and it is different than other terrorism

1 defendants. It's different than someone who just wants to
2 himself get on an airplane and travel to Syria to fight for
3 ISIS on ISIS's perceived homeland. It's different when you
4 are trying to get a group together to commit attacks here in
13:57:58 5 this country.

6 It's also different, Your Honor, I think in the
7 fact that it was supporting ISIS is a distinction with the
8 Baxter case, and I think the danger posed by ISIS is
9 greater -- certainly greater than any danger imposed by
13:58:11 10 affiliations with an Occupied Movement or the anarchist
11 ideology that was at play in that case.

12 And, Your Honor, I would also point the court
13 to -- the actions displayed by this defendant in this case
14 were quite sophisticated in many ways. The lengths taken to
13:58:33 15 try and hide his online identity, the numbers of accounts
16 used, the switching of accounts from social media
17 applications to social media application, the efforts when
18 meeting with someone to avoid surveillance, the efforts to
19 avoid detection and instructions to others to avoid
13:58:50 20 detection, to vet out other potential recruits and
21 coconspirators. You don't see that in every case, Your
22 Honor.

23 I mean, I think that shows the level of which the
24 capability this defendant has, in additions to the ideology
13:59:05 25 to support ISIS is a very dangerous combination.

1 Your Honor, I would also point out that if he was
2 just an online person, he wouldn't have gone and met someone
3 in person in Baltimore. If he was just trying to commit
4 activities online, he wouldn't have traveled to meet
13:59:24 5 someone, which is an incredible risk if all you're trying to
6 do is hide behind your computer and be a so-called keyboard
7 warrior. That's a step beyond.

8 It's also a step beyond when you communicate with
9 someone who at your direction goes to the scene of an event
13:59:42 10 where a terrorist attack occurs, and you are asking for
11 information. That's a step beyond just the typical person
12 expressing their support for ISIS.

13 And then when you after the fact try to -- you
14 cause a document to be published online taking credit for
13:59:56 15 that attack and promising new attacks, you are doing more
16 than just someone who's just sitting back and trying to
17 thread an ideology through just talking online. You're
18 getting past that, Your Honor. And that's the danger with
19 this defendant.

14:00:14 20 And so as we look at what we believed the evidence
21 showed he did in this case and we look at his intentions,
22 what he was trying to do, what he was trying to accomplish,
23 and the fact that he didn't get to carry out everything he
24 intended because he spotted surveillance and then law
14:00:35 25 enforcement was ultimately able to sort of untangle the web

1 of tracks he laid behind to gather the evidence on him
2 shouldn't be a reason to say, "Oh, he's not deserving of a
3 lengthy sentence."

4 And in responding to Mr. Bryan's comments about,
14:00:57 5 "Well, the government left him alone for a year and a half,"
6 I mean, much easier said than done in a case where the
7 defendant has taken these efforts to conceal his activities,
8 to put a case together that is going to withstand the
9 scrutiny of a jury in a jury trial. And to say the
14:01:15 10 government just left him alone or implied that would be
11 inaccurate, as well as from -- the defense received plenty
12 of discovery on the fact that there were surveillance being
13 done of the defendant in that time period.

14 So it wasn't as if the government just ignored
14:01:30 15 him, found out about him, forgot about him and then a year
16 came back to arrest him. It was a case of a very active
17 investigation that was trying to pull all these pieces
18 together, and I don't believe the government should be
19 punished for that in the court considering what sentence to
14:01:45 20 impose.

21 Your Honor, for the reasons we said in our
22 sentencing memorandum, we think this defendant is a cut
23 above the usual ISIS defendant and the usual terrorism
24 defendant in that he saw himself out as a recruiter and was
14:01:59 25 trying to pull these people together to commit attacks right

1 in this country, Your Honor, and that's why we recommend
2 that the court impose that maximum sentence.

3 THE COURT: All right. Thank you.

4 Anyone else wish to be heard before I go further?

14:02:15 5 Mr. Bryan?

6 MR. BRYAN: Your Honor, are you referring to
7 family members?

8 THE COURT: If there's anyone else that wishes to
9 address the court, now is the time. I am going to go
14:02:25 10 forward and make certain findings, as I am required to do,
11 as you're aware.

12 MR. BRYAN: Yes, Your Honor. The only thing I
13 would say in response to what Mr. Shepherd said was on that
14 last point.

14:02:36 15 I wasn't suggesting that the government ignored
16 Mr. Hendricks for a year and a half. The fact is, if there
17 was any evidence of him continuing in this type of conduct
18 for the next year and a half, that's evidence that would
19 have been presented at the trial against him. So for a year
14:02:51 20 and a half, in May of 2015 to the year and a half before he
21 was arrested, there's no evidence that he was involved in
22 the types of conduct that were being discussed in the three
23 months prior to him sort of --

24 THE COURT: All right.

14:03:07 25 MR. BRYAN: So, in essence, there's no evidence of

1 him doing anything for a year and a half before he was
2 arrested, even online activity.

3 THE COURT: All right. Thank you.

4 MS. BRYAN: And Linda Woods is Mr. Hendricks'
14:03:21 5 mother and she did ask if she could --

6 THE COURT: All right. Ms. Woods, if you want to
7 step forward, please, ma'am. You will need to use the
8 podium, if you would, and you need to state your name for
9 the court reporter. There's a record being kept, please.

14:03:35 10 Yes, ma'am.

11 MS. WOODS: My name is Linda Woods, and I am Erick
12 Hendricks' mother.

13 And I just wanted to give a little history. I'm
14 not trying to argue the case or anything, but I want to talk
14:03:46 15 about Erick's character.

16 First of all, I am a registered nurse. I've been
17 a nurse for almost 30 years. I've worked with children with
18 disabilities. I was in the military, and I was a medic in
19 the military where I got out and went to nursing school.

14:04:02 20 Erick -- I had four children at the time. They
21 traveled with me to Germany. We stayed there a while. We
22 came back and I went to nursing school. I've always
23 encouraged my children, my sons, especially, to do the right
24 thing, and I was one of those tough mothers. I didn't go
14:04:21 25 for that -- anything.

1 And, Erick, he -- when he turned to the Muslim
2 faith, I was -- you know, I was surprised, but I was
3 grateful because he prayed five times a day and did the
4 right thing. Didn't even cuss. I cuss a whole lot more
14:04:39 5 than he do. But he don't curse, and as I am -- I am really
6 proud of him for what he has made out of his life.

7 And the only thing I would like to say about the
8 three months that they were talking about, he was living at
9 my house. He was living in my yard. And I watched him. I
14:04:59 10 have a home business, and they were staying down in the shed
11 of mine, and they were living in that shed. I could see
12 them all day, every day. I never seen any action. I didn't
13 even know anything about this until he was arrested.

14 Well, he told me about it in May when he found out
14:05:16 15 about this surveillance, he called me, and let me know what
16 was going on.

17 So, but he has been -- I never saw -- Erick had an
18 injury when he was 16 years old. He broke his neck. You
19 can see the scar back there. He had the same break as
14:05:36 20 Christopher Reeves, and he had two repairs on that neck. He
21 can barely move from side to side and sit too long in one
22 place. And I believe that he would have went to the
23 military, because I was in the military, his dad was in the
24 military, my father, uncles and great uncles were all in the
14:05:55 25 military. And we have that background, so I never believed

1 that he would do anything against the government.

2 And I stand by that, and I stand by him and I also
3 stood -- I wanted to come -- I was here for when they
4 selected the jury. I was here -- I think I have been here
14:06:15 5 twice, but we couldn't stay because of work, I had my sons
6 with me and my daughter, and we couldn't stay, but I wanted
7 to testify, but I was told they didn't want me to.

8 First they did, and then they said they didn't.

9 So -- but I feel like I could have brought some
14:06:32 10 clarity of those months that they were speaking about,
11 because if I had seen anything -- and he used my wifi the
12 whole time he was there. And like I said, I wish I could
13 have been here to tell that.

14 But I am asking the judge to have mercy, the
14:06:53 15 court, to have mercy on my son. My granddaughter, she came
16 from UK. We didn't even know she was coming. She came on
17 her own.

18 THE COURT: Scotland, is that where she's at?

19 MS. WOODS: Yes, sir. We didn't even know she was
14:07:08 20 coming. She just popped up and was here by Friday. She
21 stopped in Dublin and wanted to know all about him and all
22 that stuff. And she stayed in New York all night by
23 herself. So she's a brave person like her father.

24 He's always been that type of person. When he was
14:07:23 25 eight months old, he climbed up and down the stairs. I just

1 watched him. He's always been very observant.

2 One time he drove to New York at 17 by himself. I
3 couldn't believe it. A homeless guy told me he was there.
4 But just to say that he's very adventurous. When they
14:07:39 5 saying he's going there and here, you know, that's just what
6 he is.

7 So I would like for you to have mercy on my son.
8 I am almost 65. When he -- two weeks after he was arrested,
9 his dad died from the stress. He -- he told me, he said, "I
14:07:59 10 just hope I can live to see him free." But he didn't. Two
11 weeks later, he died, which he was sick already, you know,
12 but that didn't help.

13 But I know he's been in prison, he's been
14 mentoring the young folks there, some of the young
14:08:22 15 prisoners. They had him leading prayer, and I think he
16 intervened one of the guards being hurt. He never was put
17 in isolation. I think he did himself. He asked for
18 isolation a couple of times to, you know, to concentrate on
19 what he was doing. But he's never -- and when I was there
14:08:46 20 yesterday, they all said, you know, they liked him.

21 And I've asked three times I've been to the
22 prison, special visitation, and they all granted it, because
23 I guess because, you know, because of his actions there.

24 But I just want to say that he wouldn't -- it
14:09:05 25 wouldn't do him any good -- and when he was in the

1 community, where they talking about the cell, that three
2 months he was there, he was building a hut. I call it a hut
3 because it was an A-line cabin. He was building that. He
4 never did finish it, because he got scared after he -- you
14:09:21 5 know, after this came along. And he figured that, you know,
6 since they were all over -- helicopters and that stuff, all
7 over the place, he didn't want me to be involved, you know,
8 me to get caught up in anything like that.

9 When the FBI did come and arrest him the same day
14:09:39 10 they came to my house, all my family, and they -- I showed
11 them with he lived. They went up in the -- I gave them
12 permission to go into -- look where the shed is I was
13 talking about, and I took them over to where the place he
14 was building and they didn't find anything.

14:09:57 15 So I stand by him and I believe in him. And as I
16 said, in the community where he was at, he was, you know,
17 talking with the young folks. I live in a place of 400
18 people, and there ain't nowhere you can put a cell down
19 there. And he would talk to them and encourage them.

14:10:15 20 So that's just the way he is, and I just wanted to
21 tell you that, and I wouldn't lie to you. All right.

22 THE COURT: All right, ma'am. You came quite a
23 ways.

24 Where did you come from?

14:10:26 25 MS. WOODS: Arkansas. Little Rock. Home of the

1 Razorbacks.

2 THE COURT: Okay. Thank you. I thought it
3 was Little Rock, but I just wanted to confirm it.

4 Yes, ma'am. You want to be heard?

14:10:40 5 You came a long way. You can step forward.

6 MS. ABDULHAQQ: Hello. My name is Mariam
7 Abdulhaqq.

8 THE COURT: May I ask, you are going to need to
9 speak up a little bit louder for the court reporter.

14:11:05 10 MS. ABDULHAQQ: Mariam Abdulhaqq.

11 THE COURT: You want to spell your last name,
12 please?

13 MS. ABDULHAQQ: A-B-D-U-L-H-A-Q-Q.

14 THE COURT: Thank you.

14:11:13 15 MS. ABDULHAQQ: I am Erick Hendricks' daughter and
16 only daughter. I came to the United States on Friday. I
17 traveled by myself. I came for my father. I came to
18 support him, and I knew it was going to be a big decision,
19 but in my heart, I always knew that -- my home is where my
14:12:00 20 heart is and my heart is going to be with my father. I left
21 my mother because of -- my mother has kids with my step dad,
22 and she has four kids with my step dad and I am her only
23 daughter, only oldest daughter.

24 Sorry. My mom, she didn't understand me, but she
14:12:44 25 was always there for me, but my father was -- over the

1 phone, he understood me. I would say my personalty is more
2 like my father's.

3 THE COURT: Have you had a chance to visit him
4 while you're here? Have you had a chance to visit with your
5 father?

6 MS. ABDULHAQQ: Yes, yesterday. But I have been
7 talking to my dad over the phone while I was in the United
8 Kingdom, and over the phone, there's just a different
9 connection like -- I felt as though he was always with me,
10 and, you know, you could feel his love. It was just -- he
11 could understand me, and I had a problem with my studying
12 because in the United Kingdom, I was more creative than I
13 was more academic, and I had told my dad that, and he was so
14 supportive over the phone.

15 And he said, "Mariam, sit down, and pretend you
16 are with me." I said, "Okay. Get out a piece of paper and
17 a pen and write down three things that you need to focus on
18 and you can find a solution for them," and we both did that
19 together. And ever since then, I had always planned that I
20 was going to go to my dad because this is where I -- that's
21 where I always felt like I should have been.

22 And I have no intention of going back to the
23 United Kingdom.

24 THE COURT: You intend to remain here in this
25 country?

1 MS. ABDULHAQQ: Yes.

2 THE COURT: Is there anything else you would like
3 to tell me?

4 MS. ABDULHAQQ: I am so nervous.

14:14:56 5 THE COURT: Don't be nervous.

6 MS. ABDULHAQQ: My dad taught me Sabr. In English
7 it means patience. He always told me never to worry about
8 anything. He said over the phone, "Mariam, don't worry
9 about me," and that was what -- he had so much faith. He
10 had so much faith in his love for his family. He would
11 always support them, and I know deep down that my father
12 would never do such a thing.

13 He has a good heart. And I believe -- he's taught
14 me patience and patience has led me to come back home, has
14:15:23 15 led me to come back to him.

16 THE COURT: All right. Thank you, ma'am. Good
17 luck to you.

18 MS. ABDULHAQQ: Thank you.

19 THE COURT: Anyone else?

14:16:11 20 For the record, the court, of course, is required
21 to make certain findings -- I am sorry. Do you wish to be
22 heard, too?

23 You may step forward, please. You need to state
24 your full name, sir, and spell your last name for the
14:16:31 25 record.

1 MR. BEVANY: Noah Bevany, B-E-V-A-N-Y.

2 THE COURT: Yes, sir.

3 MR. BEVANY: I just want to say I really spend a
4 lot of time with my dad and he's always there for me. And
14:16:45 5 he had like a back injury, and basketball is like something
6 I like and stuff like that. When he had time, he would come
7 and play basketball with me. He always took care of my
8 mother when she needed anything. He always took care of me
9 if I needed a new pair of shoes, or anything, he would take
14:17:03 10 care of me. And I always had him in my heart and
11 everything. It's really hurting me because stuff that they
12 saying about him I don't believe to be true, and stuff like
13 that.

14 That's all I wanted to say.

14:17:15 15 THE COURT: All right, sir. Thank you.

16 For the record, the court, of course, is required
17 to make certain findings under 18, 3553(a).

18 We will begin with the nature and circumstances of
19 the offense. Generally, the offense conduct is described as
14:17:39 20 follows:

21 Mr. Hendricks is before the court having been
22 convicted of a jury of conspiracy to provide material
23 support and resources to a foreign terrorist organization
24 and attempting to provide material support and resources to
14:17:52 25 a foreign terrorist organization.

1 Between December 2014 and May of 2015,
2 Mr. Hendricks, as a U.S. citizen, conspired with others to
3 support or provide support and resources to ISIL, sometimes
4 referred to as ISIS. Mr. Hendricks' focus in this
5 conspiracy was to recruit individuals in the United States
6 to form a cell of ISIL supporters, number one; number two,
7 training recruited individuals to commit acts of violence in
8 the United States on behalf of ISIL, and commit other acts
9 of violence in the United States on behalf of ISIL.

10 That is the general offense conduct as alleged.

11 In furtherance of the conspiracy, Mr. Hendricks
12 did the following:

13 Which I think primarily has been set forth and at
14 least been established by evidence presented in the case.

15 He used social media applications with various
16 user names, handles to recruit and communicate with ISIL
17 supporters. He vetted suitable individuals to join his ISIL
18 cell. He directed the activities of individuals, including
19 an undercover, a law enforcement agent or officer located in
20 the Northern District of Ohio.

21 He advised recruited individuals how to avoid law
22 enforcement detection on social media applications and how
23 to conduct counter-surveillance. He provided recruited
24 individuals with information to read, including materials
25 that may have contained bomb making instructions, attempted

1 to purchase land to be used in providing tactical training
2 for ISIL members. And he told recruits that he obtained
3 guidance and worked on behalf of senior brothers in ISIL,
4 and warned of possible future attacks in the United States
14:19:35 5 after an ISIL supported attack which occurred in Garland,
6 Texas.

7 And just as an aside, perhaps the most compelling
8 evidence, unfortunately, against Mr. Hendricks is the video
9 with the government's agent in Baltimore, and the discussion
14:19:51 10 Mr. Hendricks had with that particular individual is perhaps
11 the most compelling evidence, meaning it's visible, you can
12 see and -- you can see him and you can hear him and that is
13 perhaps the most compelling evidence in the case as against
14 Mr. Hendricks.

14:20:06 15 There's much more, but that certainly is one of
16 the highlights.

17 In terms of Mr. Hendricks' history and
18 characteristics, he's age 37. He was reared by both parents
19 in Arkansas. He described his childhood as being good. As
14:20:22 20 evidenced from his mother presentation here, it's pretty
21 clear to me that he had a good upbringing with parents who
22 obviously cared about him and provided him with guidance,
23 and I say that just having heard his mother. It's pretty
24 apparent to me that that was the case.

14:20:37 25 Mr. Hendricks apparently had some youth

1 experimenting with alcohol and marijuana, but that has
2 ended, perhaps by virtue of his religious belief.

3 He did attend college. He did not obtain a
4 diploma. He has some health issues as referenced by his
14:20:56 5 mother, and we are aware of the problem that he has with his
6 back.

7 Mr. Hendricks has been married twice, has two
8 children, ages 15 and 8, both of whom reside with their
9 respective mother. Of course we heard from his daughter
14:21:11 10 here, and his daughter who lives in Scotland, and he is, at
11 least as of the date of the report, he had not seen her
12 since 2013. The report is somewhat dated, so they may have
13 visited since that time.

14 His son lives in Pittsburgh, and he's only seen
14:21:30 15 him on a number of occasions, and, again, those are somewhat
16 dated assertions contained in the report.

17 In terms of the sentencing disparities, there may
18 be some by the court's sentence. The most recent data that
19 we have from the probation department is that -- the most
14:21:51 20 recent publicly available data related to this offense which
21 was from 2012, according to the PSI, according to that date
22 of the national average sentence for an individual convicted
23 of providing material support to a foreign terrorist
24 organization was 111 months.

14:22:05 25 Now, that is, again, somewhat dated. And

1 additionally, of all national defense cases, 33 percent of
2 the defendants received a nongovernment sponsored downward
3 variance of approximately 46 percent as corresponded to an
4 average 74-month reduction. That is, again, as of 2012. I
14:22:24 5 have attempted to obtain updated information which has not
6 been forthcoming.

7 In terms of the need for the sentence imposed, I
8 am not going to in any way minimize the defendant's conduct.
9 Obviously, I heard the trial. I heard the evidence, and I
14:22:41 10 think the summary that I gave earlier is a fair recitation
11 of the actions of Mr. Hendricks, unfortunately.

12 He's certainly entitled to assert his innocence.
13 He's certainly not required to make any statement, and I am
14 not suggesting that I am considering that as I decide a
14:22:58 15 sentence, but it certainly would have been somewhat helpful
16 if I had had a better understanding of the how and why he
17 apparently took this path, and so it's difficult.

18 In terms of need for the sentence imposed, the
19 defendant in this case, it's a grave concern that there are
14:23:20 20 individuals who are willing to use the Internet to perhaps
21 inspire, motivate and encourage others, to engage in
22 terrorist activities, and also to create ISIS or ISIL cells
23 within this country. It is a concern. It's an ongoing
24 concern.

14:23:35 25 I know the government continues perhaps unseen by

1 the public, but the government, of course, continues to
2 track individuals of this sort to try to take actions and be
3 proactive in ferreting out any possible terrorist cells and
4 to protect our public, and so I note that there's a need to
14:23:57 5 promote deterrence and to discourage this type of activity.

6 That being said, I would also note, as it relates
7 to this defendant, having interacted with him on a regular
8 basis during the course of this case, he's always been
9 respectful. He carries himself with a quiet dignity. And,
14:24:16 10 again, there is certainly something to be said about that.
11 And I think his actions during the course of the time that
12 I've interacted with him has been just that, as I've already
13 said, not to be repetitive, but respectful and with a quiet
14 dignity.

14:24:33 15 The guidelines are 360 months. The statutory
16 sentences for Counts 1 and 2 is zero to 15 years.

17 I am persuaded, having listened to all the
18 evidence, the facts, and obviously the sentence that I am
19 imposing is strictly limited to the information that I have
14:24:48 20 before me as it relates to Mr. Hendricks. While there's
21 been much discussion about the so-called Wright case, that
22 is not what drives the court's sentence.

23 It is simply something, an interesting comparison
24 when we compare and contrast the actions of the two cases
14:25:04 25 and the actions of various groups that were -- that we would

1 have characterized as terrorists. So, again, that is of
2 limited, if any, use to me, the so-called Wright case. So
3 I'm imposing this sentence based on what I know of the case,
4 presiding over the trial and my interaction with Mr.
14:25:21 5 Hendricks and all the various statutory factors.

6 So I will do the following:

7 Pursuant to the Sentencing Reform Act of 1984, and
8 18, United States Code, 3553(a), it will be the judgment of
9 the court that Mr. Hendricks is committed to the custody of
14:25:33 10 the Bureau of Prisons for a term of 180 months. It will be
11 concurrent and not consecutive. 180 months on Count 1; 180
12 months on Count 2, again, to be served concurrent. It is a
13 variance. And I've varied downward based upon all the
14 reasons I've just stated. I will supplement my findings in
14:25:52 15 a written order, a written memoranda which will provide in
16 greater detail.

17 When the defendant is released from prison, he
18 will be placed on supervised release for a term of life,
19 which is an upward variance. He will be supervised closely
14:26:05 20 by our probation department or others to make certain that
21 he is not in any way a risk to the public or to others.

22 Within 72 hours of being released from custody,
23 Mr. Hendricks, you will be required to report to the
24 district to which you are released.

14:26:17 25 I will waive the fine.

1 A special assessment of \$200 is due immediately.

2 You will be required to submit your person,

3 property, house, residence, vehicle, papers, computers as

4 defined under the federal statute, other electronic

14:26:31 5 communications or data storage devices to a search conducted

6 by your probation officer. Failure to submit to a search

7 may be grounds for revocation of release. And of course

8 that search must be reasonable as to time and manner and

9 based upon reasonable suspicion.

14:26:46 10 Your computer will be subject to a search for a

11 monitoring software and to insure compliance, given the

12 circumstances, the nature and the circumstances of this

13 offense. Any access to computers must be with the approval

14 of the court or your probation officer, and they will be

14:27:05 15 permitted to conduct initial and periodic unannounced

16 searches of your computer. The searches shall be conducted

17 for purposes of determining whether your computer contains

18 any prohibited data. And the software will be installed and

19 all the other details I will put other put forth in the

14:27:21 20 court's order. You will not be able to access the Internet

21 without approval by your probation officer.

22 You will be required to submit to periodic

23 polygraph testing at the discretion of the probation officer

24 as a means to insure that you're in compliance with the

14:27:33 25 requirements of your supervision.

1 And you cannot possess, view or access or
2 otherwise use material that reflects extremist or
3 terroristic views, and that is, again, a difficult
4 condition, but I believe at least based on what we know and
14:27:48 5 the evidence in this case, it is warranted.

6 And voluntary surrender, of course, the defendant
7 remains in custody.

8 I will also supplement my findings by noting that
9 I believe that a lifetime supervision, along with the
14:28:00 10 conditions I've just imposed, should allow the government to
11 continue to monitor the defendant to make certain that he's
12 no longer a risk to anyone in the community and so that is
13 why I've imposed the lifetime supervision, along with the
14 special conditions that I've imposed.

14:28:15 15 Under U.S. versus Bostic, any objections,
16 corrections, any arguments you would like to make that I
17 haven't addressed, counsel for the government, please?

18 MR. SHEPHERD: Your Honor, just to maintain for
19 the record, we do object to the reasonableness of the
14:28:31 20 sentence consistent with our earlier request for consecutive
21 sentences, Your Honor. Otherwise, no other objections.

22 THE COURT: So noted.

23 Mr. Bryan?

24 MR. BRYAN: No objections, Your Honor. We
14:28:43 25 would -- on Mr. Hendricks behalf, he did ask me to ask the

1 court to recommend two facilities. The first is Edgefield,
2 South Carolina and the second would be Butner, North
3 Carolina.

4 THE COURT: Butner I am familiar with. The other
14:28:55 5 one is -- how is it spelled, please?

6 MR. BRYAN: He tells me Edgefield.

7 THE DEFENDANT: Edgefield.

8 THE COURT: We will locate whichever one it might
9 be. We will identify it. I will make those
14:29:07 10 recommendations.

11 Mr. Hendricks, you have a right to an appeal from
12 the court's sentence and, of course, from your conviction.
13 I will put up an order. It may take me a little bit longer
14 than usual, my written opinion, setting forth your sentence,
14:29:17 15 the reasons for same.

16 You will have 14 days after we have issued that
17 order to file your notice of appeal and, of course,
18 Mr. Bryan, we will appoint him for the appeal and make sure
19 you have all the necessary papers, transcripts, et cetera,
14:29:30 20 for your appeal.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. That will be the court's
24 order. Thank you very much.

14:29:35 25 MR. SHEPHERD: Your Honor, I have one thing.

1 There was a superseding indictment in this case.
2 So we would move for I guess housekeeping purposes move to
3 dismiss the original indictment.

4 THE COURT: All right. Thank you. We will grant
5 that request, and the superseding indictment will be the one
6 that remains. Thank you very much.

7 Good luck to you, Mr. Hendricks.

8 THE DEFENDANT: Thank you.

9 MR. BRYAN: Thank you, Your Honor.

10 MR. SHEPHERD: Thank you, Your Honor.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled
matter.

s/Lori A. Callahan
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